

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

LATOYA BROWN; LAWRENCE  
BLACKMON; HERBERT ANTHONY  
GREEN; KHADAFY MANNING;  
QUINNETTA MANNING; MARVIN  
MCFIELD; NICHOLAS SINGLETON;  
STEVEN SMITH; BESSIE THOMAS; and  
BETTY JEAN WILLIAMS TUCKER,  
individually and on behalf of a class of all  
others similarly situated,

Plaintiffs,

v.

MADISON COUNTY, MISSISSIPPI;  
SHERIFF RANDALL S. TUCKER, in his  
official capacity; and MADISON COUNTY  
SHERIFF'S DEPUTIES JOHN DOES #1  
through #6, in their individual capacities,

Defendants.

Civil Action No.  
3:17-cv-00347-WHB-LRA

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS  
CLAIMS OF HERBERT ANTHONY GREEN FOR FAILURE TO PROSECUTE**

Plaintiffs respectfully file this Response to Defendants' Motion to Dismiss Claims of Plaintiff, Herbert Anthony Green, with Prejudice for Failure to Prosecute Under Federal Rule of [Civil] Procedure 41(b) (ECF. No. 182, the "Motion"), and state:

1. Plaintiffs do not oppose dismissal of Mr. Green's claims, but maintain that such dismissal should be *without* prejudice. As Defendants note, Plaintiffs previously conveyed to Defendants that Mr. Green wished to withdraw from this lawsuit as a named plaintiff, and requested that Defendants consent to dismissal of his claims without prejudice. Defendants refused, and instead moved for dismissal *with* prejudice.

2. Dismissal without prejudice is the appropriate outcome under these circumstances. “[D]ismissal[] with prejudice . . . is reserved for the most egregious of cases,” *Rogers v. Kroger Co.*, 669 F.2d 317, 320 (5th Cir. 1982), and only where “a lesser sanction would not better serve the interests of justice.” *Gray v. Fid. Acceptance Corp.*, 634 F.2d 226, 227 (5th Cir. 1981).

3. Defendants fail to demonstrate that the lesser sanction of dismissal without prejudice would not better serve the interests of justice. Defendants argue that Mr. Green’s nonparticipation in recent discovery efforts “has prejudiced Defendants by significantly impairing their ability to defend against his claims.” Defs.’ Mem. at 3 (ECF No. 183). This will be fully cured by dismissal without prejudice, since there will then be no claims by Mr. Green for Defendants to defend.

4. Plaintiffs have separately filed a Memorandum of Law in response to the Motion and incorporate that Memorandum herein as if set forth in full.

WHEREFORE, for the reasons set forth herein and in Plaintiffs’ Memorandum of Law, Defendants’ Motion to Dismiss Claims of Plaintiff, Herbert Anthony Green, with Prejudice for Failure to Prosecute Under Federal Rule of Procedure 41(b) should be denied to the extent the Motion seeks dismissal with prejudice, and the Court should instead enter an Order dismissing the claims of Plaintiff Herbert Anthony Green without prejudice.

Respectfully submitted this 28th day of February, 2018.

By: /s/ Joshua Tom

Joshua Tom

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2018, I caused the foregoing **PLAINTIFFS'**  
**RESPONSE TO DEFENDANTS' MOTION TO DISMISS CLAIMS OF HERBERT**  
**ANTHONY GREEN FOR FAILURE TO PROSECUTE** to be electronically filed with the  
Clerk of the Court using the CM/ECF system, through which copies have been served to:

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